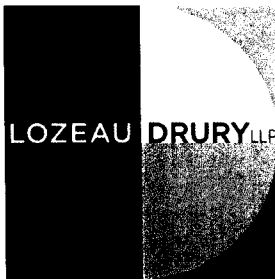


APR 26 2019



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**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

April 23, 2019

Cesar Aranda  
Vulcan Materials Company  
500 North Brand Boulevard, #500  
Glendale, CA 91203

Cesar Aranda  
Vulcan Materials Company  
11599 Old Friant Road  
Fresno, California 93730

Richard Lopez, Site Manager  
Bennett, Environmental Manager CalMat dba Vulcan Materials Co.  
11401 West Tuxford St.  
Sun Valley, CA 91353

C. Brock Lodge, Jr., Chief Executive Officer  
CalMat Co.  
1200 Urban Center Drive  
Birmingham, AL 35242

**VIA FIRST CLASS MAIL**

Corporation Service Company Which Will Do  
Business in California as  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Drive  
Suite 150N  
Sacramento, CA 95833  
Registered Agent for CalMat Co.

**Re: Notice of Violations and Intent to File Suit under the Federal Water  
Pollution Control Act**

Notice of Violations and Intent to File Suit

CalMat dba Vulcan Materials Co.

April 23, 2019

Page 2 of 30

Dear Messrs. Aranda, Lopez and Lodge:

I am writing on behalf of Los Angeles Waterkeeper ("LAW") in regard to violations of the Federal Water Pollution Control Act ("Clean Water Act" or the "Act") that LAW believes are occurring at Vulcan Material Company's facility located at 11401 West Tuxford Street, Sun Valley, California ("Facility"). This letter is being sent to CalMat dba Vulcan Materials Co., Vulcan Materials Company, CalMat Co., Cesar Aranda, Richard Lopez and C. Brock Lodge, Jr. as the responsible owners or operators of the Facilities (all recipients are hereinafter collectively referred to as "Vulcan Materials").

This letter addresses Vulcan Materials' unlawful discharge of pollutants from the Sun Valley Facility into the Tuxford Drain which flows into the Central Branch Tujunga Wash which in turn flows to the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, LAW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Facilities are engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, LAW hereby places Vulcan Materials on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, LAW intends to file suit in federal court against Vulcan Materials under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

LAW is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, LAW has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. LAW is dedicated to the preservation, protection, and defense of the inland and coastal surface and groundwaters of Los Angeles County from all sources of pollution and degradation. To further this mission, LAW actively seeks federal and state implementation of the Clean Water Act. Where necessary, LAW directly initiates enforcement actions on behalf of itself and its members.

Notice of Violations and Intent to File Suit

Members of LAW reside in Los Angeles County, and near the Tuxford Drain, the Central Branch Tujunga Wash, the Los Angeles River, and Pacific Ocean (hereinafter "Receiving Waters"). As explained in detail below, the Facility is discharging pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. LAW members use the downstream Receiving Waters to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, LAW members use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facilities into the Receiving Waters impairs LAW members' use and enjoyment of these waters. Thus, the interests of LAW's members have been, are being, and will continue to be adversely affected by the Facilities' failure to comply with the Clean Water Act and the General Permit.

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") and the State Water Resources Control Board ("SWRCB") is 4 191002241. Vulcan Materials certifies that the Facility is classified under SIC Codes 1442 ("Construction Sand & Gravel") and 2951 ("Asphalt Paving Mixtures & Blocks"). The Facility operates six days a week, Monday through Saturday (Saturday hours are from 6 a.m. to 12 noon). The Facility extends over about 70 acres. Approximately 25 percent of the Facility has impervious surfaces. According to the Facility's Storm Water Pollution Prevention plan ("SWPPP"), "[t]he entire site is directly exposed to precipitation and stormwater runoff." The site consists of six drainage areas. The SWPPP labels these areas Drainage Areas 1 through 6. Two of the drainage areas, Drainage Areas 3 and 4, containing aggregate stockpiles and a conveyor belt, do not discharge stormwater. Drainage Area 6 comprising most of the eastern half of the Facility is where most of the Facilities industrial activities occur. Although some of the storm water falling in this area is captured and reused as process water, uncaptured rainwater flows to one of three discharge locations near the southeastern corner of the Facility. Some flows from Drainage Area 5 then flow into Drainage Area 6. Drainage Area 2 may flow to some extent to Drainage Area 6 as well. Within Drainage Area 6, stormwater flows to one of three discharge points at the Facility's entrances along Tuxford Street, identified by the Facility as, from north to south, DP-1, DP-2, and DP-3. The SWPPP is confusing on the number of sampling points, stating that there are only two locations (SWPPP, pp. 5-5) while listing off the names of three sample locations in Tables 5.3 and 5.4. On information and belief, LAW alleges the outfalls contain storm water that includes or is commingled with runoff from areas of the Facility where industrial processes occur. Storm water discharged from the three discharge points flows into the Tuxford Drain, which discharges to the Tujunga Wash, which flows into Reach 4 of the Los Angeles River, which flows into Reach 3 of the Los Angeles River, which flows into Reach 2 of the Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay. See [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/electronics\\_documents/MapsofSurfaceWaters,GroundWaters,andCoastalFeatures.pdf](https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/electronics_documents/MapsofSurfaceWaters,GroundWaters,andCoastalFeatures.pdf).

The Regional Board has identified beneficial uses of the Los Angeles River, including its tributary, Tujunga Wash, the Los Angeles River Estuary, and the San Pedro Bay and established

water quality standards for these waters in the “Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties”, generally referred to as the Basin Plan (“Basin Plan”). See [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/2018/FinalTable2-1a\\_05242018\\_GA2\\_clean.pdf](https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2018/FinalTable2-1a_05242018_GA2_clean.pdf); [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/2016/Table2-1.pdf](https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/2016/Table2-1.pdf); see also *id.*, p. 2-39. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation. Likewise, visible pollution impairs people’s non-contact use of Tujunga Wash and Tuxford Drain.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan provides that “[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-24. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26. The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38. The Basin Plan provides that “[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37.

The Basin Plan also provides a chemical constituent standard that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any

designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)..." *Id.* at 3-24. The Basin Plan provides a Maximum Contaminant Level ("MCL") for aluminum of 1 mg/L.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).<sup>1</sup>

The EPA 303(d) List of Water Quality Limited Segments lists the Tujunga Wash below Hansen Dam as impaired by ammonia, coliform bacteria, copper and trash. *See* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml). Reach 5 of the Los Angeles River is listed as impaired for copper, lead, oil, nutrients, and trash, among other pollutants. Reach 4 of the Los Angeles River is listed as impaired for copper, lead, nutrients, and trash, among other pollutants. Reach 2 of the Los Angeles River is impaired for trash, oil, nutrients, copper, and lead, among other pollutants. Reach 1 of the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, and pathogens, among other pollutants. The Los Angeles River Estuary is impaired for trash and sediment toxicity, among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other pollutants.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").<sup>2</sup> The following benchmarks have been established for pollutants discharged by Vulcan Materials' Facility: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD") – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; nitrate + nitrite ("N+N") – 0.68 mg/L; and biological oxygen demand ("BOD") – 30 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; COD – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; nitrate + nitrite ("N+N") – 0.68 mg/L; and biological oxygen demand ("BOD") – 30 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

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<sup>1</sup> These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

<sup>2</sup> The Benchmark Values can be found at [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).

## **II. Alleged Violations of the General Permit.**

### **A. Discharges in Violation of the Permit.**

Vulcan Materials has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facilities' discharge monitoring locations.

The Facility has discharged and continues to discharge storm water with unacceptable levels of TSS, N+N, zinc, and COD in violation of the General Permit. Vulcan Materials' sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
1/31/2019	Zinc	0.34 mg/L	0.120 mg/L (CMC)	sample point north – SP-N
1/31/2019	Zinc	0.937 mg/L	0.120 mg/L (CMC)	sample point south – SP-S
1/31/2019	Zinc	0.856 mg/L	0.120 mg/L (CMC)	sample point west – SP-W
1/31/2019	Zinc	0.931 mg/L	0.120 mg/L (CMC)	sample point east – SP-E

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2018-2019 wet season. Prior to January 31, 2019, Vulcan Materials failed to analyze any storm water samples from the Facility for levels of zinc. LAW alleges that since at least April 23, 2014, and continuing through today, Vulcan Materials has discharged from the Facility storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to:

- Zinc – 0.12 mg/L (CMC)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	Annual NAL/ EPA Benchmark Value	Outfall (as identified by the Facility)
1/5/2019	Total Suspended Solids	240 mg/L	100 mg/L	LAW Sample <sup>3</sup>
12/3/2018	Total Suspended Solids	950 mg/L	100 mg/L	DP-2

<sup>3</sup> Analytical result of sample taken by LAW.

11/29/2018	Total Suspended Solids	1,500 mg/L	100 mg/L	DP-2
2018-2019 reporting year	Total Suspended Solids	433.4 mg/L	100 mg/L	All discharge points <sup>4</sup>
3/2/2018	Total Suspended Solids	130 mg/L	100 mg/L	DP-1
3/2/2018	Total Suspended Solids	84 mg/L	100 mg/L	DP-2
3/2/2018	Total Suspended Solids	180 mg/L	100 mg/L	DP-3
1/8/2018	Total Suspended Solids	440 mg/L	100 mg/L	DP-1
1/8/2018	Total Suspended Solids	1,100 mg/L	100 mg/L	DP-2
1/8/2018	Total Suspended Solids	420 mg/L	100 mg/L	DP-3
2017-2018 reporting year	Total Suspended Solids	392.3 mg/L	100 mg/L	All discharge points <sup>5</sup>
2/6/2017	Total Suspended Solids	55 mg/L	100 mg/L	DP-3
1/12/2017	Total Suspended Solids	8.5 mg/L	100 mg/L	DP-1
1/12/2017	Total Suspended Solids	250 mg/L	100 mg/L	DP-2
1/12/2017	Total Suspended Solids	100 mg/L	100 mg/L	DP-3
12/30/2016	Total Suspended Solids	110 mg/L	100 mg/L	DP-1
12/30/2016	Total Suspended Solids	250 mg/L	100 mg/L	DP-2
12/30/2016	Total Suspended Solids	160 mg/L	100 mg/L	DP-3
12/22/2016	Total Suspended Solids	49 mg/L	100 mg/L	DP-1
12/22/2016	Total Suspended Solids	250 mg/L	100 mg/L	DP-2
12/22/2016	Total Suspended Solids	37 mg/L	100 mg/L	DP-3
12/16/2016	Total Suspended Solids	74 mg/L	100 mg/L	DP-1
12/16/2016	Total Suspended Solids	860 mg/L	100 mg/L	DP-2
12/16/2016	Total Suspended Solids	27 mg/L	100 mg/L	DP-3
2016-2017 reporting year	Total Suspended Solids	171.6 mg/L	100 mg/L	All discharge points <sup>6</sup>
12/3/2018	N+N	0.52 mg/L	10 mg/L	DP-2
11/29/2018	N+N	1.6 mg/L	10 mg/L	DP-2
3/2/2018	N+N	1.7 mg/L	10 mg/L	DP-1
3/2/2018	N+N	0.0 mg/L	10 mg/L	DP-2
3/2/2018	N+N	1.7 mg/L	10 mg/L	DP-3
1/8/2018	N+N	8.5 mg/L	10 mg/L	DP-1
1/8/2018	N+N	2.8 mg/L	10 mg/L	DP-2

<sup>4</sup> This value represents the average of all TSS measurements taken at the Facility during the 2018-2019 reporting year as of the date of this notice letter and is higher than 100 mg/L, the annual NAL for TSS.

<sup>5</sup> This value represents the average of all TSS measurements taken at the Downtown Facility during the 2017-2018 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

<sup>6</sup> This value represents the average of all TSS measurements taken at the Downtown Facility during the 2016-2017 reporting year and is higher than 100 mg/L, the annual NAL for TSS.



1/8/2018	N+N	2.7 mg/L	10 mg/L	DP-3
2017-2018 reporting year	N+N	2.9 mg/L	100 mg/L	All discharge points <sup>7</sup>
2/6/2017	N+N	0.54 mg/L	10 mg/L	DP-3
1/12/2017	N+N	0.55 mg/L	10 mg/L	DP-1
1/12/2017	N+N	0.654 mg/L	10 mg/L	DP-2
1/12/2017	N+N	0.5 mg/L	10 mg/L	DP-3
12/30/2016	N+N	1.28 mg/L	10 mg/L	DP-1
12/30/2016	N+N	0.65 mg/L	10 mg/L	DP-2
12/30/2016	N+N	1.04 mg/L	10 mg/L	DP-3
12/22/2016	N+N	1.17 mg/L	10 mg/L	DP-1
12/22/2016	N+N	0.75 mg/L	10 mg/L	DP-2
12/22/2016	N+N	1.7 mg/L	10 mg/L	DP-3
2016-2017 reporting year	N+N	0.9 mg/L	100 mg/L	All discharge points <sup>8</sup>
1/5/2019	Chemical Oxygen Demand	160 mg/L	120 mg/L	LAW Sample <sup>9</sup>
1/31/2019	Zinc	0.34 mg/L	0.26 mg/L	sample point north – SP-N
1/31/2019	Zinc	0.937 mg/L	0.26 mg/L	sample point south – SP-S
1/31/2019	Zinc	1.14 mg/L	0.26 mg/L	sample point west – SP-W
1/31/2019	Zinc	0.485 mg/L	0.26 mg/L	sample point east – SP-E
2018-2019 reporting year	Zinc	0.726 mg/L	0.26 mg/L	All discharge points <sup>10</sup>

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2015-2016, 2016-2017, 2017-2018 and the current 2018-2019 wet seasons reporting years as well as a sample collected by LAW in January 2019. In addition, on information and belief, LAW alleges that discharges from the Facility during each of these rainy

<sup>7</sup> This value represents the average of all N+N measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

<sup>8</sup> This value represents the average of all N+N measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

<sup>9</sup> Analytical result of sample taken by LAW.

<sup>10</sup> This value represents the average of all zinc measurements taken at the Facility during the 2018-2019 reporting year as of the date of this notice and is higher than 0.26 mg/L, the annual NAL for zinc.

seasons and reporting years have been in excess of the NALs for TSS, N+N, zinc, and COD. LAW alleges that since at least April 23, 2014, Vulcan Materials has discharged from the Facility storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and/or NALs for TSS, N+N, zinc, and COD.

LAW's investigation, including its review of the Facility's SWPPP, the analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA benchmark values and NALs, indicates that Vulcan Materials has not implemented BAT and BCT at the Facility for its discharges of TSS, N+N, zinc, COD, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. The Facility was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Vulcan Materials is discharging polluted storm water associated with its industrial operations from the Facility without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. LAW alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since at least April 23, 2014, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which LAW alleges that the Facility has discharged storm water containing impermissible and unauthorized levels of TSS, N+N, zinc, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.<sup>11</sup>

Further, LAW puts Vulcan Materials on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Vulcan Materials must comply and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Vulcan Materials' obligation to have installed BAT and BCT at the Facilities. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.<sup>12</sup> Finally, even if Vulcan

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<sup>11</sup> The rain dates on the attached table are all the days when 0.01" or more rain was observed at a weather station in Burbank located approximately 4 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ndbc.noaa.gov/cdo-web/>. (Last accessed on April 15, 2019).

<sup>12</sup> The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of

Materials submits an Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit for the Facility, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, N+N, zinc, and COD in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vulcan Materials is subject to penalties for violations of the General Permit and the Act since April 23, 2014.

**B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facilities.**

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

**i. Failure to Analyze for Required Pollutant Parameters.**

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals

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themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII. And exceedances of the NALs are robust evidence that BAT/BCT have not been installed or maintained at a facility. *See California Sportfishing Prot. All. v. River City Waste Recyclers, LLC*, 205 F. Supp. 3d 1128, 1151 (E.D. Cal. 2016).

and other pollutants that are likely to be present in storm water discharges in significant quantities.” 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” 2015 Permit, Section XI(B)(6)(c).

Under the 1997 Permit, facilities must also analyze storm water samples for analytical parameters listed in Table D of the 1997 Permit. 1997 Permit, Section B(5)(c)(iii). For facilities with an SIC Code of 1442, Table D requires analysis of N+N. Under the 2015 Permit, facilities must also analyze storm water samples for applicable parameters listed in Table 1 of the 2015 Permit. 2015 Permit, Section XI(B)(6)(d). For facilities with an SIC Code of 1442, Table 1 requires analysis of N+N.

Under the 2015 Permit, facilities must analyze collected samples for “[a]dditional applicable industrial parameters related to receiving waters with 303(d) listed impairments or approved TMDLs based on the assessment in [SWPPP] Section X(G)(2)(a)(ix). 2015 Permit, Section XI(B)(6)(e). Section X(G)(2)(a)(ix) of the 2015 Permit requires that a facility identify “industrial pollutants related to the receiving waters with 303(d) listed impairments identified in Appendix 3 or approved TMDLs that may be causing or contributing to an exceedance of a water quality standard in the receiving waters.”

From at least April 23, 2014 through at least January 31, 2019, Vulcan Materials did not analyze any storm water samples taken at the Facility for iron, aluminum, and zinc. From April 23, 2014 through at least the date of this Notice, Vulcan Materials did not analyze any storm water samples taken at the Facility for BOD or COD. Each of these pollutants have been detected at levels near or above the applicable NALs and are present in the Facility’s discharge. Based on the types of materials and activities that occur at the Facility and confirming data, LAW alleges that Vulcan Materials has been required to analyze the Facility’s storm water discharges for iron, aluminum, zinc, BOD, and COD. During the 2014-2015 reporting year, Vulcan Materials was required to take at least two samples of storm water for each discharge location. Beginning with the 2015-2016 reporting year, Vulcan Materials was required to obtain four storm water samples of qualifying storm events from each of the Facility’s discharge locations. Assuming that the number of samples taken by Vulcan Materials since 2014 is consistent with the number of samples of QSEs required by the General Permit, LAW is informed and believes that the Facility’s failure to analyze for iron, aluminum, zinc, BOD, and COD in each sampling event since the April 23, 2014 reporting year results in as many as 20 violations per reporting year of the General Permit, totaling at least 50 violations through the date of this Notice. Each of these violations is ongoing because the facility cannot cure the omitted sampling and the facility has failed to sample for these parameters at least twice already during the current reporting year.

In addition, LAW alleges that the SWPPP for the Facility contains an insufficient pollutant source assessment in that it fails to identify iron, aluminum, zinc, BOD, and COD as industrial pollutants.

These violations are ongoing. Vulcan Materials is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least April 23, 2014.

**ii. Failure to Conduct Required Sampling and Analysis.**

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The 2015 Permit now requires only two days of no discharge from the facility to precede a qualifying sampling event. 2015, § Permit XI.B.1.a. The Facility has repeatedly violated these monitoring requirements.

On information and belief, LAW alleges that during the 2014-2015 reporting years, Vulcan Materials failed to collect and analyze storm water samples from two required storm events at the Facility. On information and belief, LAW alleges that during the 2015-2016, 2017-2018, and 2018-2019 reporting years, Vulcan Materials failed to collect and analyze storm water samples from four required storm events at the Facility. On information and belief, LAW alleges that during the 2015-2016 reporting year, Vulcan Materials failed to collect and analyze storm water samples from three qualifying storm events at the Facility. On information and belief, LAW alleges that during the 2017-2018 wet season, Vulcan Materials failed to collect and analyze storm water samples from two qualifying storm events at the Facility. To the extent that there are no additional qualifying storm events during the 2018-2019 reporting year, LAW alleges that Vulcan Materials failed to collect and analyze storm water samples from one qualifying storm event during the second half of the reporting year.

Despite its claims that there were insufficient storm events that produced storm water discharges during those reporting years and wet season, to the extent that Vulcan Materials offered explanations, LAW alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during each of those wet seasons and reporting years during the Facility's normal working hours. Specifically, on information and belief, LAW alleges that discharges from qualifying rain events occurred on the following dates when the Facility was operating:

- December 2, 2014
- December 12, 2014
- December 16, 2014
- January 30, 2015
- April 7, 2015
- April 25, 2015

- January 6, 2016
- February 17, 2016
- March 11, 2016
- April 7, 2016
- February 2, 2019
- February 9, 2019
- February 14, 2019
- March 2, 2019
- March 6, 2019
- March 21, 2019

The failure to collect and analyze storm water samples from the requisite sampling events at each of the Facility's three discharge locations results in at least 15 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vulcan Materials is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 23, 2014.

**C. Failure to Complete Annual Comprehensive Site Compliance Evaluation.**

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

Information available to LAW indicates that Vulcan Materials has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facilities' Annual Evaluations provide a sufficient explanation of the Facilities' failure to take steps to reduce or prevent high levels of pollutants observed in the Facilities' storm water discharges. *See* 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); *see also* 2015 Permit § X(B)(1)(b). The failure to assess the Facilities' BMPs and respond to inadequacies in the Annual Evaluations negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Vulcan Materials has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

LAW puts Vulcan Materials on notice that its failures to submit accurate and complete Annual Evaluations are violations of the General Permit and the CWA. Vulcan Materials is in ongoing violation of the General Permit every day that the Facilities operate without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA.

Vulcan Materials is subject to civil penalties for all violations of the CWA occurring since April 23, 2014.

**D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.**

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and

maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these BMP requirements, Vulcan Materials has been conducting and continues to conduct industrial operations at the Facilities with inadequately developed, implemented, and/or revised SWPPPs.

The SWPPP fails to implement required advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Sun Valley Facility because they do not reflect best industry practice considering BAT/BCT. The Facility's storm water samples have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of the Facility's BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Vulcan Materials has failed to sufficiently update and revise the Facilities' SWPPPs. The Facilities' SWPPPs have therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

LAW puts Vulcan Materials on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These above violations are ongoing, and LAW will include additional violations as information and data become available. Vulcan Materials is subject to civil penalties for all violations of the CWA occurring since April 23, 2014.

#### **E. Failure to Comply with General Permit Evaluation and ERA Requirements.**

On or about December 20, 2016, Vulcan Materials submitted a "Level 1 Exceedance Response Action Report" to the State Board's SMARTS system. The Exceedance Response Action ("ERA") Report and Level 1 status was triggered by exceedances of the NAL for N+N adopted in the General Permit. The ERA Level 1 report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." General Permit, § XII(C)(1)(c). In its December 20, 2016 ERA Report, Vulcan Materials stated "that there are no potential industrial sources or industrial activities occurring at the facility that would have generated an NAL exceedance for N+N." Dec. 20, 2016 ERA Report, p. 1. Vulcan Materials made no changes to its BMPs as a result.



On or about December 28, 2017, Vulcan Materials submitted a Level 1 ERA Report for TSS discharges above the NAL during the 2016-2017 reporting year. In response, the Facility installed “check dams/gravel bags” at each of the three discharge locations and “along intermittent areas of concentrated flow (e.g., flow line of concrete v-gutter).” Dec. 28, 2017 ERA Report, p. 1. It also mentioned continuing maintenance of upgradient basins and “site specific sample training collection.” *Id.*

Also in December, 2017, Vulcan Materials submitted a “Level 2 Action Plan” to SMARTS as a result of the Facility exceeding the NAL for N+N for a second reporting year. The Level 2 ERA Action Plan and Level 2 status are triggered by continued exceedances of the NALs once a Facility has reached Level 1 status. The ERA Level 2 report must, among other requirements, address each parameter for which there is an exceedance. General Permit, § XII(D)(1)(a). Although no BMPs were identified in the prior Dec. 20, 2016 Level 1 ERA Report, the Dec. 2017 Level 2 Action Plan claims that the Facility attempted to address the N+N exceedances with “additional good housekeeping and additional erosion and sediment controls.” Dec. 2017 ERA Level 2 Action Plan, p. 3-2. The Dec. 2017 Level 2 Plan acknowledges that “[t]hese measures were not effective in reducing the N+N concentrations in runoff samples collected from the Sun Valley Facility during the 2016-2017 reporting year.” *Id.* The Level 2 Plan reiterates the check dams/gravel bags and maintenance included in the Dec. 28, 2017 ERA Report for TSS. The Level 2 Plan calls for sampling within the Facility of possible source areas.

On or about December 28, 2018 prepared a “Level 2 Action Plan” to SMARTS as a result of the Facility exceeding the NAL for TSS during the 2017-2018 reporting year. The TSS Level 2 Action Plan determines that “silts/fines from the aggregate and asphalt recycle stockpiles were a major contributor to the NAL exceedance in TSS.” Dec. 28, 2018 Level 2 ERA, p. 2. The plan states it will add straw wattles at the bases of various aggregate and asphalt recycling stockpiles and straw wattles and gravel bags at undisclosed locations upslope of the discharge points. It mentions providing increased storage capacity at a sediment/retention basin and removal of accumulated silts and fines from an undisclosed location. *Id.* The plan says these management practices will be installed by October 2019.

Although “[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” General Permit, Fact Sheet, p. 60.

Vulcan Materials has failed to prepare response action reports that comply with the General Permit’s requirements. General Permit, § XII.C.1.c A requires that a Level 1 ERA report to “[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit.” Neither of the Level 1 reports submitted by Vulcan Materials are consistent with this requirement. In particular, the Level 1 ERA reports fail to identify BAT/BCT which would ensure compliance with the Permit and the NALs.

Vulcan Materials also has submitted deficient Level 2 ERA reports for both TSS and N+N. The Level 2 reports are required either to describe and analyze BMPs that will achieve the NALs, or they are required to still identify and evaluate the BMPs necessary to achieve the NALs, the estimated costs of these BMPs, and “an analysis describing the basis for the selection of BMPs implemented in lieu of the additional BMPs evaluated but not implemented.” General Permit, § XII.D.2.a.iii-iv. Neither the TSS nor the N+N Level 2 reports identify BMPs necessary to achieve the NALs for those pollutants. Nor does either report identify and evaluate BMPs that will achieve those two NALs, including their costs and why other available, advanced BMPs were not selected. For example, advanced treatment systems capable of consistently meeting the NAL for TSS are available. Such treatment as well as bioretention BMPs also can reduce N+N levels.

Section XII.D.3.c of the General Permit requires dischargers that have previously submitted a Level 2 ERA report to update the report if additional NAL exceedances occur despite a prior election to implement BMPs that it expected would meet the NALs. Any such update must be submitted along with the Facility’s Annual Report no later than July 15th following the conclusion of the applicable rainy season. Vulcan Materials opted for the BMP Demonstration in its Dec. 2017 Level 2 ERA for N+N. However, the vague BMPs identified in that report failed to bring the Facility’s N+N levels within the NAL for discharges occurring in the 2017-2018 rainy season. In fact, the N+N level in the Facility’s stormwater increased during that rainy season. As a result, Vulcan Materials was required to submit an update of its Level 2 ERA for N+N by not later than July 15, 2018.

Section XII.D.1.d of the General Permit requires that “[a]ll elements of the Level 2 ERA Action Plan shall be implemented as soon as practicable and completed no later than 1 year after submitting the Level 2 ERA Action Plan.” Rather than implement the measures identified in the Dec. 28, 2018 Level 2 ERA report for TSS, Vulcan Materials elected to install BMPs no later than October 2019. LAW is informed and believes that the schedule selected by Vulcan Materials does not comply with the permit’s requirement to install all identified BMPs “as soon as practicable.”

Accordingly, LAW puts Vulcan Materials on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without adequate Level 2 ERA Action Plans for TSS and N+N since at least December 20, 2016. These violations are ongoing. Vulcan Materials is subject to civil penalties for each day it has failed to submit an adequate Level 2 ERA Action Plan.

### **III. Persons Responsible for the Violations.**

LAW puts Vulcan Materials Company, CalMat dba Vulcan Materials Co., CalMat Co., Cesar Aranda, Richard Lopez, and C. Brock Lodge, Jr. on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, LAW puts Vulcan Materials Company, CalMat dba Vulcan Materials Co., CalMat Co., Cesar Aranda, Richard Lopez, and C.

Brock Lodge, Jr. on notice that it intends to include those subsequently identified persons in this action.

**IV. Name and Address of Noticing Parties.**

The name, address and telephone number of Los Angeles Waterkeeper is as follows:

Bruce Reznik, Executive Director  
LA Waterkeeper  
120 Broadway, Suite 105  
Santa Monica, CA 90401  
Tel. (310) 394-6162  
bruce@lawaterkeeper.org

**V. Counsel.**

LAW has retained legal counsel to represent it in this matter. Please direct all communications to:

Rebecca L. Davis  
Michael R. Lozeau  
Lozeau Drury LLP  
1939 Harrison Street, Suite 150  
Oakland, California 94612  
Tel. (510) 836-4200  
rebecca@lozeaudrury.com  
michael@lozeaudrury.com

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Vulcan Materials to a penalty of up to \$37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to \$53,484 for violations occurring after November 2, 2015 (and assessed after January 15, 2018). In addition to civil penalties, LAW will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

LAW believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. LAW intends to file a citizen suit under Section 505(a) of the Act against Vulcan Materials and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, LAW would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions

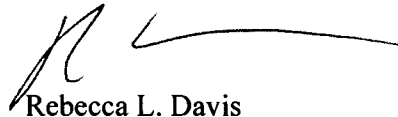
CalMat dba Vulcan Materials Co.

April 23, 2019

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in the absence of litigation, LAW suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. LAW does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis

Lozeau Drury LLP

Attorneys for Los Angeles Waterkeeper

**SERVICE LIST – via certified mail**

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

William Barr, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Mike Stoker, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Deborah J. Smith, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

**ATTACHMENT A**  
**Rain Dates – Vulcan Materials, Sun Valley, CA**

11/1/2014	1/31/2016	2/3/2017	11/22/2018
(.05)	2/17/2016	2/6/2017	11/29/2018
11/21/2014	2/18/2016	2/7/2017	12/5/2018
(0.01)	3/6/2016	2/8/2017	12/6/2018
12/2/2014	3/7/2016	2/10/2017	12/24/2018
12/12/2014	3/11/2016	2/11/2017	1/5/2019
12/16/2014	3/28/2016	2/17/2017	1/6/2019
12/17/2014	3/29/2016	2/19/2017	1/7/2019
1/10/2015	4/7/2016	2/21/2017	1/12/2019
1/11/2015	4/8/2016	2/26/2017	1/14/2019
1/26/2015	4/9/2016	3/5/2017	1/15/2019
1/27/2015	5/7/2016	3/21/2017	1/16/2019
1/30/2015	5/8/2016	4/8/2017	1/17/2019
1/31/2015	10/17/2016	5/7/2017	1/31/2019
2/7/2015	10/28/2016	9/3/2017	2/1/2019
2/8/2015	10/30/2016	9/21/2017	2/2/2019
2/22/2015	11/20/2016	10/31/2017	2/3/2019
2/23/2015	(Sunday)	1/8/2018	2/4/2019
3/1/2015	11/21/2016	1/9/2018	2/5/2019
3/2/2015	11/26/2016	2/12/2018	2/9/2019
4/7/2015	12/15/2016	3/2/2018	2/10/2019
4/25/2015	12/16/2016	3/3/2018	2/13/2019
5/8/2015	12/21/2016	3/10/2018	2/14/2019
5/14/2015	12/22/2016	3/11/2018	2/15/2019
5/15/2015	12/23/2016	3/13/2018	2/20/2019
6/9/2015	12/24/2016	3/14/2018	2/27/2019
7/18/2015	12/30/2016	3/15/2018	2/28/2019
9/15/2015	12/31/2016	3/16/2018	3/2/2019
11/2/2015	1/4/2017	3/20/2018	3/5/2019
12/10/2015	1/5/2017	3/21/2018	3/6/2019
12/11/2015	1/7/2017	3/22/2018	3/10/2019
12/13/2015	1/9/2017	5/1/2018	3/21/2019
12/19/2015	1/10/2017	5/12/2018	
12/22/2015	1/11/2017	5/21/2018	
1/4/2016	1/12/2017	5/30/2018	
1/5/2016	1/19/2017	10/3/2018	
1/6/2016	1/20/2017	10/12/2018	
1/7/2016	1/22/2017	10/13/2018	
1/19/2016	1/23/2017	11/21/2018	

Notice of Violations and Intent to File Suit